IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO : 15079 of 1996

Between:

Sk.Hussain S/o.Sk.Bhurkan
13-1-290/1 Rajdharkhanpet
Mangalhat Hyderabad

..... PETITIONER

AND

1. The Addl. Industrial Tribunal-cum-Addl. Labour Court ,
Andhra Pradesh, Hyderabad
2. The Depot Manager, Andhra Pradesh State Road Transport
Corporation, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or writ, particularly one in the nature of Writ of Certiorari and after calling for the records, quash the award of Additional Industrial Tribunal cum Additional Labour Court, Hyderabad in I.D.No.40/89 Dt.28/10/1992 to the extent of denying the petitioner back wages and continuity of service as illegal, and unjust and pass such other order.

For the Petitioner: MR. G. VIDYASAGAR, Advocate

For the Respondent No.1: The Govt. Pleader for Labour

For the Respondent No.2: MR. K. HARINATH, S.C. for APSRTC

The Court made the following:

ORDER:

Petitioner, a driver in the Andhra Pradesh State Road Transport Corporation, on 02-02-1988 was driving a city bus on the route Secunderabad Railway Station to Neredmet. Around 9 p.m. at Malkajgiri bus stop, a passenger is alleged to have fallen, while boarding the bus, and consequently was run over by being crushed under the left rear wheel of the bus. He died.

A charge of rash and negligent driving was framed and the petitioner subjected to domestic enquiry. After a due process of enquiry, he was visited with the penalty of removal from service. He assailed the same in I.D.No.40 of 1989 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad under Section 2-A (2) of the Industrial Disputes Act, 1947. By the award dated 28-10-1992, the Labour Court confirmed the finding of the petitioner's guilt. However, the Labour Court concluded that as the petitioner had put in about 12 years of service before the accident, which was first of its kind in the petitioner's career, and as the Conductor of the bus also contributed to the accident, which fact was not considered by the departmental authority in arriving at the quantum of punishment and as the petitioner had already undergone considerable mental agony and financial loss, it would be sufficient if deprivation of back wages and continuity of service as a penalty is substituted for the extreme penalty of removal from service. Consequently, the Labour Court, in exercise of its jurisdiction and powers under Section 11-A of the Act, directed that the petitioner be reinstated into service without back wages and continuity of service but that his past service from the date of joining to the date of his removal should be counted for the purpose of the gratuity payable to him.

From the evidence on record in the domestic enquiry, as has been adverted to in the award of the Labour Court it appears that there was heavy rush of the passengers for the bus in question. On account of the large number of passengers already in the bus, some of whom were also travelling on the foot-board and were also congregating around the driver's seat, the rear view mirror was obstructed and did not disclose the state of affairs at the entry point at the door. The bus also had only a single central opening and not one in the front and in the back, as is the usual case. The Conductor was busy in issuing tickets. In the circumstances, the accident occurred which no doubt, resulted in a fatality. The event certainly posits the negligence of the petitioner in the performance of his duties which has caused the death of a passenger. However, the circumstances of over crowding and the inability

of the petitioner to have seen what was transpiring at the entry point and the contribution of the Conductor to the fatality are certainly aspects that mitigate the degree of negligence of the petitioner. These mitigating factors ought to have structured the quantum of penalty to ensure that it is appropriate to the degree of guilt of the petitioner in the negligence in the performance of his duties. Deprivation of the entire past service, in the considered view of this Court, is not the penalty proportionate to the gravity of the negligence the petitioner has been found guilty of.

In the circumstances, the writ petition is disposed of declaring that the reinstatement of the petitioner into service, shall be without back wages for the period he was out of service, consequent on the order of removal. The petitioner shall be entitled to count his entire service for any future promotional benefits. He shall not, however, be entitled for review of any promotions already made, till date. The order of the Labour Court impugned herein, is modified to the extent above. No costs.

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GODA RAGHURAM, J

16-08-2004

Glv/Pvsn

ASSISTANT REGISTRAR

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SECTION OFFICER

Copies to

1. The Additional Industrial Tribunal-cum-Additional Labour Court , Andhra Pradesh, Hyderabad
2. The Depot Manager, Andhra Pradesh State Road Transport Corporation, Secunderabad

3. Two C Cs to the Government Pleader for Labour, High Court Buildings, Hyderabad. (O.U.T)
4. Two C D copies.